

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Rachel Ellman	Team: Squad #13	CCRB Case #: 201604641	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 05/28/2016 4:00 PM	Location of Incident: § 87(2)(b) and the 44th Precinct stationhouse	Precinct: 44	18 Mo. SOL 11/28/2017	EO SOL 11/28/2017	
Date/Time CV Reported Tue, 05/31/2016 10:39 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 05/31/2016 10:39 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)		
§ 87(2)(b)		
§ 87(2)(b)		

Witness(es)	Home Address
§ 87(2)(b)	
§ 87(2)(b)	
§ 87(2)(b)	
§ 87(2)(b)	
§ 87(2)(b)	
§ 87(2)(b)	

Subject Officer(s)	Shield	TaxID	Command
1. Officers			
2. INS Brian Mullen	00000	906885	044 PCT
3. POM Brian Garcia	30586	954846	044 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. DT3 Juan Valdez	01742	912098	MP SQD
2. SGT Michael Cohn	02237	932476	044 PCT
3. SGT Johnny Napoleon	03120	921622	PBBX
4. POM Michael Jenkins	08673	952892	044 PCT

Officer(s)	Allegation	Investigator Recommendation
A.INS Brian Mullen	Abuse: At § 87(2)(b), Ins. Brain Mullen instructed Det. Juan Valdez to arrest § 87(2)(b)	
B. Officers	Force: At § 87(2)(b), officers used physical force against § 87(2)(b)	
C. Officers	Abuse: At § 87(2)(b), officers strip-searched § 87(2)(b)	
D. Officers	Force: At § 87(2)(b), officers hit § 87(2)(b)'s head against a vehicle.	
E. Officers	Discourtesy: At § 87(2)(b), officers spoke discourteously to § 87(2)(b) and § 87(2)(b)	
F.POM Brian Garcia	Abuse: At the 44th Precinct stationhouse, PO Brian Garcia did not obtain medical treatment for § 87(2)(b)	

Case Summary

§ 87(2)(b) filed this complaint on May 31, 2016 via phone. § 87(2)(b) also filed a complaint via phone on May 31, 2016, § 87(2)(g)

§ 87(2)(b)

On May 28, 2016, at approximately 4:45 p.m., members of the § 87(2)(b) and § 87(2)(b) families engaged in a verbal dispute in the waiting room of § 87(2)(b) emergency room. The families were separated, and Det. Juan Valdez, of the 229 Missing Persons Squad and at the time serving as § 87(2)(b) paid detail, instructed the § 87(2)(b) to exit the hospital, which they did. Shortly thereafter, the argument began again, with § 87(2)(b) and his brother standing inside the hospital's foyer, while members of the § 87(2)(b) family, including § 87(2)(b) and § 87(2)(b) stood just beyond the hospital's exit. Det. Valdez and § 87(2)(b) security staff were unable to keep the groups separate, so Det. Valdez called for backup. Shortly thereafter, Sgt. Johnny Napoleon and other officers from the 44th Precinct arrived at the scene and worked to physically separate the groups. § 87(2)(b) attempted to verbally alert officers of § 87(2)(b) who was directing gang signs at the § 87(2)(b). Amidst this conversation, Ins. Brian Mullen, at the time of the 44th Precinct, arrived and approached the scene. Ins. Mullen reached his hand out to § 87(2)(b)'s shoulder, which § 87(2)(b) lightly brushed off his person. Immediately, Ins. Mullen and numerous other 44th Precinct officers converged on § 87(2)(b) brought him to the ground, and arrested him (**Allegation A**). (Board Review 01)

§ 87(2)(b) attempted intervene in Ins. Mullen's arrest of § 87(2)(b) his father, and was promptly, physically moved away by multiple officers. § 87(2)(b) resisted officers by flailing his arms, yet was eventually brought to the ground (**Allegation B**). On the ground, officers knelt § 87(2)(b) in the back and slammed his head against the pavement. After officers handcuffed § 87(2)(b) he was stood up and frisked by multiple officers. During this frisk, § 87(2)(b)'s shorts fell to the ground, and an officer prevented § 87(2)(b) and other officers from pulling his pants back up (**Allegation C**). Officers then brought § 87(2)(b) to the rear of a civilian car, where they pressed him up against the side of the vehicle and then repeatedly hit his head onto the vehicle (**Allegation D**). (Board Review 02)

§ 87(2)(b) was handcuffed at the location and, while en route to the 44th Precinct stationhouse, complained to PO Garcia that he was having difficulty breathing due to his asthma. Upon arrival at the stationhouse, § 87(2)(b) requested an inhaler or medical attention of some sort to aide his breathing, but was not given any medical attention (**Allegation E**). (Board Review 03) § 87(2)(b) also requested medical attention for his epilepsy, for which an EMS came to the stationhouse.

§ 87(2)(b) and § 87(2)(b) were all handcuffed and taken to the 44th Precinct stationhouse. § 87(2)(b) was charged with § 87(2)(b)

§ 87(2)(b), while § 87(2)(b) was discharged and his arrest was voided; arrest documentation is unavailable for § 87(2)(b) because he is a minor.

§ 87(2)(g)

Mediation, Civil and Criminal Histories

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
- § 87(2)(b) filed a notice of claim in regards to this incident, claiming that he was falsely arrested. (Board Review 21)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint each for § 87(2)(b) and § 87(2)(b) (Board Review 06)
- Det. Valdez has one allegation each in two CCRB complaints in his 22 year tenure with the NYPD. In 201015332, he was alleged to have illegally entered a home, yet the complainant was uncooperative. In 201107950, he was exonerated of another allegation of improper search. (Board Review 07)
- Ins. Mullen has had 20 allegations made against him in 11 CCRB cases during his 22 years with the NYPD; no allegations have been substantiated. Most of Ins. Mullen's allegations concern his speech toward civilians, as five claims of profanities and offensive language have been filed against him. Further, he has also been alleged of other misconduct that is verbal in nature, including threats of force and of arrest. (Board Review 08)
- This is the first allegation made against PO Garcia in his three year tenure with the NYPD (Board Review 22)

Video Footage

- Video footage of the incident was obtained from security cameras at § 87(2)(b). There are two cameras that capture this incident, one looking outside to the exterior of the ER entrance (IA 177), herein after Video 1, and one displaying the foyer immediately before this outdoor area, which is between two sets of sliding glass doors (IA 111), herein after Video 2. Transcriptions for both videos are located in IA 68.
 1. **Video 1** (IA 177, Board Review 09) shows the exterior of § 87(2)(b). The video begins prior to the arrival of backup officers, and shows officers physically separating the § 87(2)(b) from § 87(2)(b) upon arrival. At 4:52:48, Ins. Mullen arrives and is seen speaking with Sgt. Napoleon. Ins. Mullen then reaches out and grabs § 87(2)(b)'s shoulder, and after § 87(2)(b) removes Ins. Mullen's hand from his body, a group of officers tackle him to the ground, and go off-screen; the video does not show officers apprehending or handcuffing § 87(2)(b). § 87(2)(b) attempts to intervene in his father's arrest, and is removed by officers to the top

left portion of the screen. § 87(2)(b) is taken to the ground and then pressed up against the rear of a vehicle. The video does not capture § 87(2)(b)'s strip search allegation, and, as it is without audio, does not capture any alleged discourtesies.



2016-10-27_11-12-14.mp4

2. **Video 2** (IA 111, Board Review 10) is located in the foyer of the ER, and looks in toward the hospital, with the hospital exit behind the frame. The video shows Det. Valdez, Sgt. Napoleon, and PO Garcia at the location; Ins. Mullen is not present for this footage.



2016-10-27_11-16-18.mp4

Findings and Recommendations

Officer Identification

Officers were identified based on civilian testimony, officer testimony and surveillance footage. Officers involved in the physical apprehension of § 87(2)(b) could not be identified; no 44th Precinct officers were able to identify additional police officers at the location, and the surveillance footage does not provide a high-quality image of the officers' faces.

Ins. Mullen, Det. Valdez, PO Garcia, Sgt. Napoleon and PO Jenkins were all present at the location, yet denied involvement in apprehending § 87(2)(b).

Allegations not pleaded

- § 87(2)(g) [REDACTED]
- § 87(2)(g) [REDACTED]
- § 87(2)(g) [REDACTED]
- § 87(2)(g) [REDACTED]

Allegation A—Abuse: Brian Mullen instructed Det. Valdez to arrest § 87(2)(b)

§ 87(2)(g) [REDACTED].

Ins. Mullen stated that, upon arrival at § 87(2)(b), he saw a disorderly situation in which officers were attempting to restrain civilians. Ins. Mullen stated that Det. Valdez informed him that he instructed the § 87(2)(b) to exit the hospital, but that they attempted to reenter the

hospital despite his order not to do so; Det. Valdez believed the § 87(2)(b) intended to fight the § 87(2)(b) and told Ins. Mullen he feared for his safety. Det. Valdez told Ins. Mullen that he had not attempted to arrest § 87(2)(b) yet Ins. Mullen believed § 87(2)(b) was in violation of OGA and trespassing for defying Det. Valdez's order. Ins. Mullen stated that he then attempted to interview hospital security, civilians inside the hospital, and other individuals involved. Ins. Mullen stated that he then went to arrest § 87(2)(b) yet was unable to do so because § 87(2)(b) refused to put his hands behind his back. Further, he stated that § 87(2)(b) was attempting to reenter the hospital, so Ins. Mullen extended his arm toward § 87(2)(b) to prevent him from reentering the hospital; he stated that § 87(2)(b) "would have walked in[to the hospital]" had he not extended his arm. Ins. Mullen stated that § 87(2)(b) then forcefully pushed Ins. Mullen's arm off of his body, and proceeded toward the hospital entrance. Ins. Mullen informed § 87(2)(b) that he was under arrest, and officers who had seen the prolonged struggle between the two came to assist. Ins. Mullen stated that he and these officers were able to bring § 87(2)(b) to the ground, yet that § 87(2)(b) continued to resist. Ins. Mullen stated that Det. Valdez completed all arrest documentation, and did so with information gathered from various interviews for which Ins. Mullen was present. (Board Review 11)

Video 1 (IA 177) shows members of the § 87(2)(b) family, including § 87(2)(b) move toward the hospital entrance and comply as officers lightly push them from the entrance. This continues to happen as members of the § 87(2)(b) family move in and out of the frame, at times exiting from the top right, and at other times returning to the wall of officers now formed outside the hospital's entrance. At 4:51:30 p.m., Det. Valdez and Sgt. Napoleon are seen conversing on the left side of the frame, and they continue to speak for approximately 15 seconds. There is slightly less than a minute in which the § 87(2)(b) are largely off screen, and there are no attempts to reenter the hospital or speak with individuals who are inside the hospital. At 4:52:36 p.m., § 87(2)(b) speaks with Sgt. Napoleon and Det. Valdez, as § 87(2)(b) stands close behind her. Approximately 10 seconds later, Ins. Mullen arrives and approaches from the parking lot. At 4:52:48 p.m., Ins. Mullen speaks with Sgt. Napoleon, who is on his right, and § 87(2)(b) on his left; Det. Valdez stands behind Sgt. Napoleon, and § 87(2)(b) and § 87(2)(b) stand beside § 87(2)(b). At 4:52:57 p.m., § 87(2)(b) approaches the entrance of the hospital on the bottom portion of the screen. He is lightly pushed back by officers, including Det. Valdez, and does not attempt to reenter. § 87(2)(b) stands still and is turned so that he is facing away from the hospital. At 4:53:10, Ins. Mullen extends his left arm to § 87(2)(b)'s right shoulder. § 87(2)(b) turns slightly to his right and in one fluid motion extends his arm to remove Ins. Mullen's hand from his body. Immediately, Ins. Mullen and approximately 5 uniformed officers converge on § 87(2)(b) as he falls to the ground off screen; § 87(2)(b) is not seen again in the frame.

Video 2 (IA 112) shows Det. Valdez speaking briefly with Sgt. Napoleon. Det. Valdez does not speak with Ins. Mullen, who is not in the video because he was not present at the time.

§ 87(2)(b) stated that he approached the crowd of officers gathered outside the entrance of the hospital and identified himself as § 87(2)(b). Shortly thereafter, officers brought § 87(2)(b) into the foyer, so that he was now within eyesight of the § 87(2)(b).

family. § 87(2)(b) stated that § 87(2)(b) was taunting him, and that he grew angry and said aloud, “Do you see what this fucking asshole is doing?” § 87(2)(b) then felt Ins. Mullen’s arm come across his chest from behind. § 87(2)(b) stated that he reflexively and lightly brushed the arm off of his body and said, “Don’t fucking touch me.” Immediately, six to eight officers, including Ins. Mullen, converged on § 87(2)(b) brought him to the ground, and handcuffed him. § 87(2)(b) recalled an unidentified officer saying, “You should have never done that. When a white shirt touches you, you stop.” (Board Review 01)

Det. Valdez stated that he called for a 10-85 when he saw the § 87(2)(b) family attempt to reenter the hospital despite previous orders not to; Det. Valdez indicated no information over the radio besides the need for assistance. At the time, Det. Valdez did not consider anyone involved to be under arrest, nor did he believe any crimes had been committed. Officers from the 44th Precinct arrived and tried to separate the group, yet they refused to disperse and continued to yell at each other. Det. Valdez stated that he saw officers attempting to physically control and separate the group, with some members of each family resisting this attempted dispersal. However, Det. Valdez emphasized that there was no resistance that would have warranted a resisting arrest charge. Det. Valdez stated that he did not see any member of the § 87(2)(b) family being physically apprehended, nor did he see any civilian in handcuffs. At the stationhouse, Det. Valdez stated that he was instructed by Ins. Mullen to place three individuals—§ 87(2)(b) and § 87(2)(b)—under arrest. Further, he stated that Ins. Mullen instructed him to detail that § 87(2)(b) pushed Ins. Mullen, yet Det. Valdez stated that he did not see this encounter himself. Additionally, Det. Valdez stated that all information on the criminal court complaint for § 87(2)(b) was included per instructions from Ins. Mullen; he believed Ins. Mullen also spoke directly with the ADA assigned to the case. (Board Review 12)

Sgt. Napoleon stated that, upon arrival, he saw two groups arguing in front of the hospital. Sgt. Napoleon physically interjected to try to calm the civilians, and then spoke with Det. Valdez. Det. Valdez informed Sgt. Napoleon that the incident stemmed from a stolen cell phone; Sgt. Napoleon did not recall Det. Valdez mentioning civilians fighting. Sgt. Napoleon stated that the groups were “going at each other,” and were not listening to officer commands to stop arguing. Sgt. Napoleon stated that he saw Ins. Mullen arrive but did not recall speaking with Ins. Mullen, nor did he recall Ins. Mullen speaking to anyone. He stated that Ins. Mullen was attempting to handcuff § 87(2)(b) and believed Ins. Mullen to be involved in the physical apprehension of § 87(2)(b). Sgt. Napoleon did not recall § 87(2)(b) pushing or making contact with Ins. Mullen. Sgt. Napoleon had no intention himself of arresting any civilians, and stated that he did not hear Ins. Mullen issue commands to him or anyone else instructing them to make an arrest. (Board Review 13)

§ 87(2)(b)’s arrest and criminal court documentation were written by Det. Valdez, yet are comprised of information from Ins. Mullen. The arrest documentation states that § 87(2)(b) initiated contact with Ins. Mullen and pushed him, therefore obstructing his performance of lawful duties. (Board Review 14) The criminal court complaint states that § 87(2)(b) refused to comply with multiple commands issued by Ins. Mullen, that he was actively attempting to reenter the hospital, and that he stated this all verbally, saying, “No, I’m

going in.” The criminal court complaint also states that § 87(2)(b) pushed Ins. Mullen out of his way and then continued to walk towards the entrance of § 87(2)(b). (Board Review 15)

Per Patrol Guide Procedure 208.01, an officer may arrest a civilian when there is probable cause that they committed a crime. (Board Review 16)

Per NYS Penal Law 195.07, a person is guilty of obstructing governmental administration when he intentionally obstructs, impairs or perverts the administration of law by means of intimidation, physical force or interference. (Board Review 18)

Per NYS Penal Law 205.30, a person is guilty of resisting arrest when he intentionally prevents or attempts to prevent a police officer from effecting an authorized arrest of himself or another person. (Board Review 17)

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

§ 87(2)(g)

Allegation B—Force: At § 87(2)(b), officers used physical force against

§ 87(2)(b)

Allegation C—Abuse: At § 87(2)(b), officers strip-searched § 87(2)(b)

Allegation D—Force: At § 87(2)(b), officers hit § 87(2)(b)'s face against a vehicle.

Allegation E—Discourtesy: At § 87(2)(b), officers spoke discourteously to § 87(2)(b) and § 87(2)(b)

§ 87(2)(b) stated that when he approached the officers surrounding his father and attempted to pull officers off of his father, approximately four officers grabbed § 87(2)(b). § 87(2)(b) pulled him away from his cluster around his father, and brought him to the ground a few feet away. Officers attempted to handcuff § 87(2)(b) who lay face-down, yet he stated that he refused to give his hands. § 87(2)(b) stated that officers continuously kneed and punched him in the back to subdue him, and when he slightly lifted his head, an officer slammed his head onto the pavement. After officers handcuffed § 87(2)(b) he stated that they pulled him to his feet by the chain of the handcuffs, and then walked him over to the rear of a police vehicle. There, an officer began to frisk him. Amidst the frisk, an officer pulled down § 87(2)(b)'s shorts so that they were at his ankles. A separate officer attempted to pick his shorts up off the ground, yet this initial officer proceeded to look through the pockets of § 87(2)(b)'s shorts while they remained on the ground. § 87(2)(b) stated that he was then shoved up against the vehicle so that his cheek was touching it. § 87(2)(b) stated that there were two instances when he slightly lifted his head and an officer slammed it back against the vehicle. Last, § 87(2)(b) stated that while he was being apprehended, an officer said to him, “Shut the fuck up, pussy.” (Board Review 02)

§ 87(2)(b) stated that he saw approximately five officers punching § 87(2)(b)'s body and face prior to being handcuffed, and after saw officers repeatedly slam § 87(2)(b)'s head against a civilian vehicle. § 87(2)(b) was unable to see the conclusion of § 87(2)(b)'s arrest because of his own arrest. Further, § 87(2)(b) stated that, his own apprehension, an officer said to him, “You little pussy, what are you going to do?” (Board Review 01)

In a phone statement, § 87(2)(b) § 87(2)(b) § 87(2)(b)'s sister, stated that she saw § 87(2)(b) being frisked, during which an officer pulled his pants to the ground. She stated that she and other civilians present continuously called out to officers to pick up § 87(2)(b)'s pants. § 87(2)(b) § 87(2)(b) noted that § 87(2)(b)'s pants were never picked up, and that he left the location with his pants down. (Board Review 19)

PO Garcia stated that § 87(2)(b) was not physically involved in his father's arrest, and that the decision to arrest § 87(2)(b) was because of his shouting. PO Garcia stated that § 87(2)(b) was handcuffed near the rear of a vehicle, and then immediately placed in a vehicle and taken to the stationhouse; PO Garcia did not recall who handcuffed § 87(2)(b) and did not witness any force being used against him, including force involving the vehicle. (Board Review 20)

PO Garcia was the lone officer who recalled officers apprehending § 87(2)(b) in any capacity. No officer interviewed recalled engaging with § 87(2)(b) or saw him being apprehended, and none could identify the officers struggling with § 87(2)(b) in Video 1. Neither § 87(2)(b) nor any officers present for the arrest recalled ever seeing § 87(2)(b)'s pants on the ground or ever seeing him being frisked, nor did they recall hearing complaints from § 87(2)(b) or other civilians regarding a strip-search. Last, no officers interviewed recalled hearing any other officers directing profanities of any sort to any civilians during the incident, and each stated that they, themselves, never made such statements.

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Allegation F—Abuse: At the 44th Precinct stationhouse, PO Brian Garcia did not obtain medical treatment for § 87(2)(b)

§ 87(2)(b) stated that he explained to PO Garcia en route to the stationhouse that he is asthmatic, and upon arrival to the stationhouse, stated that he requested an asthma inhaler or medical attention of some sort to relieve his asthma. § 87(2)(b) stated that while PO Garcia informed him that the stationhouse had no asthma medication, he sought no alternatives for § 87(2)(b) (Board Review 03)

PO Garcia stated that he transported § 87(2)(b) to the 44th Precinct stationhouse, yet had no recollection of § 87(2)(b) complaining about asthma or difficulty breathing at or en route to the stationhouse. (Board Review 20) No other officers could speak to this allegation.

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Squad: 13

Investigator: _____
Signature Print Date

Squad Leader: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date